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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 349

JAMES L. FORESTER, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

JAMES L. FORESTER, JR.
3110 Mt. Vernon Ave.
Alexandria, Va.
Petitioner pro se

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Judgment sought to be reviewed:

Dismissal of Appeal taken to Fourth Circuit Court of Appeals.

Date of Filing of Judgment: April 6, 1966.

Statutory Provision believed to confer on Supreme Court of the United States jurisdiction to review this judgment by writ of certiorari: 28 U.S. Code § 1254.

Question presented for review:

Whether or not Forester has a cause of action against the United States.

STATUTES INVOLVED

Title 28, United States Code § 1346(b):

> (b) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

§ 2674. Liability of United States.

> The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

Conn. Gen. Statutes (Revision of 1902)
§ 1296 (repealed) *Intimidation; boycotting.*

> Every person who shall threaten, or use any means to intimidate any person to compel such person, against his will, to do or abstain from doing any act which such person has a legal right to do, or shall persistently follow such person in a disorderly manner, or injure, or threaten to injure, his property, with intent to intimidate him, shall be fined not more than one hundred dollars, or imprisoned not more than six months.

Conn. Gen. Statutes (Revision of 1958)
§ 53-174. *Breach of the Peace. Intimidation. Libel.*

Any person who disturbs or breaks the peace by tumultuous and offensive carriage, noise or behavior, or by threatening, traducing, quarreling with, challenging, assaulting or striking another, or disturbs or breaks the peace, or provokes contention, by following or mocking any person, with abusive or indecent language, gestures or noise, or, with intent to frighten any person, threatens to commit any crime against him or his property or writes or prints and publicly exhibits or distributes, or publicly exhibits, posts up or advertises, any offensive, indecent or abusive matter concerning any person, shall be fined not more than five hundred dollars or imprisoned not more than one year or both. (1949 Rev., § 8518)

STATEMENT OF CASE

Civil Action No. 320 was brought by Forester against the United States of America under the Federal Tort Claims Act, Title 28, U.S. Code 1346(b).

The charge has been made by Forester that Edward W. O'Meara and Leo E. Francini, employees of the Veterans Administration, did intentionally and without just cause drive James L. Forester, Jr. out of the homebuilding business in the New London-Groton, Connecticut, market area. This action caused the following damage to Forester:

1. A loss of certain homes warranted by Forester.
2. A loss of certain loans and bonds guaranteed by Forester totaling $312,000.
3. A loss of investment, profit, salary, bonus, and expenses totaling $155,639.

The United States District Court for the Eastern District of Virginia dismissed on the following grounds: 1) that this is a corporate suit brought in an individual name, and 2) that the Government has not consented to be sued for this wrong. The District Court has interpreted this wrong as deceit and misrepresentation.

Forester did not agree: 1) that this is a corporate suit, nor did he agree 2) that either deceit or misrepresentation existed. Therefore, an appeal was taken to the Fourth Circuit Court of Appeals.

The Fourth Circuit Court of Appeals dismissed on the grounds that it appeared to them that Forester had misconceived his remedy, that Forester had failed to state a cause of action against the United States, and that the appeal appeared to be without merit.

ARGUMENT

It appears that because of the general wording of the order of dismissal from the Eastern District Court of Virginia and the general wording of the order of dismissal from the Fourth Circuit Court of Appeals that this Petition must deal with the basis of the complaint, and show a cause of action.

The gist of this case is that under Connecticut law: 1) It is not lawful for one person to destroy another person's business without a just cause; and 2) If one injures the property of another he is liable in a civil action for damages.

From *Goldman v. Feinberg*, 37 A.2d 355, 130 Conn. 671:

> We, in this state, recognize that a cause of action does exist for unlawful interference with business and that it is not essential to that cause of action that it appear that the tort has resulted in a breach of contract to the detriment of the

plaintiff. *Wyneman v. Deady*, 79 Conn. 414, 65 Atl. 129; *Skene v. Carayanis*, 103 Conn. 708, 131 Atl. 497. As we said in the *Skene* case (p. 714), "The law does not, however, restrict its protection to rights resting upon completed contracts, but it also forbids unjustifiable interferences with any man's right to pursue his lawful business or occupation and to secure to himself the earnings of his industry. Full, fair and free competition is necessary to the economic life of a community, but under its guise, no man can by unlawful means prevent another from obtaining the fruits of his labor."

From *Soucy v. Wysocki*, 139 Conn. 622:

> No citation of authority is required to demonstrate that ordinarily, at common law, if one injures the property of another wilfully, wantonly or negligently, he is liable in an action for damages.

Also, from *Soucy v. Wysocki*, a wilful act is one that is "intentional, wrongful and without just cause of excuse." *Rogers v. Doody*, 119 Conn. 532, 534, 178 A. 51; *Sharkey v. Skilton*, 83 Conn. 503, 506, 77 A. 950.

From *State v. Stockford*, 77 Conn. 227:

> A combination to cause a strike for the purpose of injuring and destroying the business and property of another, or of depriving another of his liberty or property without just cause, is both unlawful and criminal. 1 Eddy on Combinations, ¶ 521 et seq.; *Old Dominion S.S. Co. v. McKenna*, 30 Fed. Rep. 48; *Arthur v. Oakes*, 63 id. 310, *Plant v. Woods*, 176 Mass. 492, 498; *State v. Stewart*, 59 Vt. 273, 289; *State ex rel. Durnet v. Huegin*, 110 Wis. 189; *Doremus v. Hennessy*, 176 Ill. 608; *State v. Glidden*, 55 Conn. 46, 71.

Also from *State v. Stockford*, 77 Conn. 227:

> The language or conduct which will constitute the unlawful use of threats or means to intimidate, need not be such as to induce a fear of personal injury. Any words or acts which are calculated and intended to cause an ordinary person to fear an injury to his person, business or property, are equivalent to threats. *State v. Donaldson*, 32 N.J.L. 151; *Barr v. Essex Trades Council*, 53 N.J.Eq. 101; *Crump v. Commonwealth*, 84 Va. 927; *Rogers v. Evarts*, 17 N.Y. Supp. 264; *O'Neil v. Behanna*, 182 Pa. St. 236.

This is a case that comes under a law (The Tort Claims Act) where it appears that there have been relatively few cases and neither the District Court nor the Circuit Court of Appeals knows what the law means. The District Court referred to "*Newstadt v. USA*, 366 US 696." This is a case in which this same District Court (Eastern District of Virginia) had decided a tort claims case, was upheld by the Fourth Circuit Court of Appeals, and was reversed by the Supreme Court. The *Newstadt* case is a case in which the United States Supreme Court held that negligent misrepresentation was excepted by § 2680(h) of Title 28. Wilful destruction of Forester's business is charged here.

I can only conclude, considering the facts that follow that 1) the District judge wanted to get the case out of his court as fast as possible and to get a higher court's opinion before proceeding further, and that 2) because of the general wording of the order from the District Court, the Circuit Court of Appeals could see no other satisfactory decision than the one that they issued.

1. This case has never gotten past the pre-trial stages. No depositions were taken.

2. I believe the *Newstadt* decision has been misapplied. I further believe that the District judge did not have enough evidence to really be able to decide whether *Newstadt* applied or not.

3. The District judge brought up the *Newstadt* decision as applying, not the U. S. attorney, at the hearing on February 12, 1965 when he dismissed.

4. The District Court judge dismissed this case on a hearing on motions on February 12, 1965. On October 10, 1964 (the hearing prior to the February 12, 1965 hearing) the District judge refused to entertain the U. S. Attorney's motion to dismiss on the grounds that this was a corporate action without first getting from the U. S. Attorney the evidentiary evidence which the U. S. Attorney could use in a motion to dismiss. Yet the District judge did dismiss on February 12, 1965 for this reason (and *Newstadt*) without this evidentiary evidence from the U. S. Attorney. He dismissed without permitting Forester to argue his motion (Amended Motion for Production of Documents).

In short, I believe that the District Court and Circuit Court of Appeals have decided (without sufficient evidence) an important question of Federal law that has not been but should be settled by the Supreme Court and, further, that the District Court has misapplied a former opinion of the Supreme Court, the *Newstadt* opinion.

Petitioner therefore respectfully prays that a writ of certiorari be granted.

JAMES L. FORESTER, JR.
3110 Mt. Vernon Ave.
Alexandria, Va.

Petitioner pro se

CERTIFICATE OF SERVICE

I, James L. Forester, Jr., hereby certify that service of the foregoing Petition for Writ of Certiorari was made upon respondents by delivery of five copies thereof on the 1st day of July, 1966, at the office of the attorneys of record as follows:

Thurgood Marshall, Solicitor General
Department of Justice
Washington 25, D. C.

John D. Schmidtlein
Asst. U. S. Attorney
Eastern District of Virginia
Alexandria Division
Post Office Building
Alexandria, Va.

JAMES L. FORESTER, JR.

APPENDIX

[Filed April 6, 1966]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10,262

JAMES L. FORESTER, JR.,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria.
Oren R. Lewis, District Judge.

ORDER

It appearing from (1) the original and amended complaints and (2) the factual assertions made by the plaintiff upon presentation of his motion to amend or reconsider the District Court's judgment of dismissal that plaintiff, acting pro se, has misconceived his remedy, if any he has, for alleged wrongful acts and has failed to state a cause of action against the defendant; and, furthermore, it appearing that this appeal is without merit, it is

ORDERED, that this appeal be and the same is hereby dismissed.

HERBERT S. BOREMAN
United States Circuit Judge

ALBERT V. BRYAN
United States Circuit Judge

Dated:

A. D. BARKSDALE
United States Circuit Judge

_____, 1966